IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.06.2006

Coram:
The Honourable Mr. Justice P. SATHASIVAM
&
The Honourable Mr. Justice V. DHANAPALAN

W.A. Nos. 635 & 636 of 2001

The Association of Educational Institutes for
Hotel Management & Catering Technology
Reg. No.135/97
represented by its President
Mr. M.P. Purushothaman
D-103 Aruna Complex
Chennai - 600 102 .. Appellant in both the appeals/
Petitioner in both WPs.

Vs.

1. The Government of Tamil Nadu
represented by its Secretary
Higher Education Department
(J2) Secretariat
Chennai - 600 009

2. The Director of Technical Education
Chennai - 600 025 .. Respondents in both the appeals/
Respondent in both Wps.

Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 14.11.2000 passed in W.P. Nos. 10271 of 1999 and 4156 of 2000.

WP 10271/99:Filed under Art.226 of the constitution of India praying for the issue of writ of certiorarified mandamus in the nature of writ calling for records of the first respondent in G.O. (Ms)No.154, Higher Education (J1) Department dt. 15.4.99 and quash the same in so far as it relates to the members of the petitioner association and direct the respondents to fix the fees atleast on par with the fees prescribed in the Catering Institutes run by the State Government and Central Institutes.

WP 4156/2000: Filed under Art.226 of the constitution of India to issue a writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of writ, calling for the records of the respondents relating to the order of the 1st respondent in G.O.Ms.No.12,Higher Education Department dated 18.01.2000 and quash the same and directing the respondents to fix

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the fees structure for Catering Technology and Hotel Management Institutes for 2000-2001 atleast at Rs.39,000/- for Free Seat and Rs.58,500/- for payment seat per annum in so far as the Members of the petitioner Association are concerned.

For appellants — Mr. Kandavadivel Doraisamy

For respondents — Mr. M. Dhandapani
Additional Government Pleader

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COMMON JUDGMENT

(Judgment of the Court was delivered by V. DHANAPALAN, J.)

These two Writ Appeals are directed against the order dated 14.11.2000 of the learned Single Judge made in W.P. No.10271 of 1999 challenging the Government Order in G.O. Ms. No.154, Higher Education (J-1) Department dated 15.04.1999 and W.P. No. 4156 of 2000 challenging the Government Order in G.O. Ms. No.12, Higher Education Department dated 18.01.2000. Both these Government Orders were issued in respect of regulation of tuition fees in unaided self-financing polytechnics and revision of fees for diploma course in unaided Hotel Management and Catering Technology institutions.

2. In this judgement, for the sake of convenience, we shall refer the parties as per their rank before the learned single Judge.

3. The learned single Judge, after finding that the fixation of the fees cannot be on the basis of the admission made for each institution, held that it can be fixed only on the basis of sanctioned strength of the institutions. It was further held that merely because the petitioners could not fill up the payment seats, they cannot challenge the fixation of the fees which has been done, taking into consideration, the sanctioned strength of the institution and the materials furnished before them. Moreover, the Committee consisting of experts have given valid reasons to fix the quantum of fees as stated in the report which had been accepted by the Government and it is a well-settled principle that this Court cannot sit on appeal on those reasonings and nothing has been pointed out as to how the Committee has erred or omitted to consider the relevant portion of the objections while fixing the fee structure and in that view of the matter, the learned single Judge dismissed the writ petitions filed by the petitioner associations (hereinafter referred to as "the petitioners") as there were no merits.

4. The petitioner is an association of educational institutes for Hotel Management and Catering Technology and its registration no. is 135/97 and its Registered Office is at D-103, Aruna Complex, Chennai - 600 102. The self-financing Hotel Management and Catering

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Institutes in Tamil Nadu have been functioning since early 1990s purely based on the fee structure prevailing in the State-run Food Craft Institute, now known as State Institute of Hotel Management and Catering Technology, Trichy and the Central Government-run Institute of Hotel Management and Catering Technology and Applied Nutrition, Adyar. Since its establishment, these self-financing catering institutes were not getting any grants from the Government or the Government Agencies unlike the State Institute of Hotel Management and Catering Technology, Trichy and Institute of Hotel Management and Catering Technology and Applied Nutrition, Tharamani.

5. The Hotel Management and Catering Technology Institute at Tharamani is being run by Tamil Nadu Tourism and Development Department as a self-financing Institute. This Institute was under the Board of Tamil Nadu Tourism & Development Corporation - a Government body in which the Director of Technical Education is also a member in the Governing Body, was charging Rs.35,000/- per year for the year 1998-99. Based on the above fees only, the petitioners have invested huge sum of money and started the Institutes.

6. The Government of Tamil Nadu, has issued G.O.Ms. No.154, Higher Education (J1) Department dated 15.04.1999, in which it was ordered that the levying of tuition fees in unaided self-financing polytechnic and catering institutes can issue notification. In exercise of powers conferred by sub-section (1) of Section 4 of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992 (Tamil Nadu Act 57 of 1992) and in supersession of the Higher Education Department Notification S.R.O. No.lI(2)issued notification fixing certain fee structure for unaided self-financing polytechnic and catering technology. Further, in the Government Order issued in G.O. Ms. No.12 dated 18.01.2000 wherein orders have been issued for collection of tuition fees for diploma courses in unaided Hotel Management and Catering Technology institution. The revision of fees was ordered in that in order to regulate the fees under two heads namely tuition fees and development fees as stipulated in the policy guidelines of the Ministry of Human Resources Development, Government of India. Accordingly, the revised fee structure has been issued in the above order. Aggrieved by two Government Orders, the petitioners have filed the above two writ petitions.

7. The main grievance of the petitioners is that the fee fixed by the Government is not on par with the fee fixed by the Government Institutes and the ratio in which the fee structure between the free seat and that of the payment categories is irrational arbitrary, unconstitutional and contrary to the guidelines issued by the Supreme Court. Taking into account the expenses incurred by the Institutes, the Committee has not fixed the fees. The schemes, plans and budget of individual institution for the purpose of finding out what would be

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an ideal and reasonable fee structure for that institution based on the Committee's decision since the Committee has not fixed the fees and the fee fixed in the Government Order dated 18.01.2000 cannot be sustained in law.

8. It was also contended by the petitioners that the orders of the Government are void since the objection of the petitioners was not at all considered and therefore, there is a violation of principles of natural justice. The respondents have failed to take note of the fee structure prevailing in the Central Government Catering Institutes as well as the Catering Institutes of the State Government and also the ratio of 1:1 is not maintainable by the respondent in allotting payment seat category and free seat category students in the window system.

9. The respondents have filed their counter contending that the Government, after examining the objections and suggestions received with respect to the draft notification, have fixed the fees. According to the respondents, the self-financing catering institutes should get approval of AICTE for its establishment. The institution permitted to be established without aid from the Government must follow the rules and norms prescribed by the Government from time to time. The Government, in order to prohibit the collection of capitation fee for admission to educational institutions in the State of Tamil Nadu and to provide for matters relating thereto, promulgated an ordinance called "the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fees) Ordinance 1992 which was later on enacted as Tamil Nadu Act 57/92. Exercising powers under the said Act, the Government issued a draft notification in G.O. Ms. No.727, Higher Education (J2) Department dated 29.02.1993 prescribing the tuition fee to be collected from the students. The Government, after examining the objections and suggestions received with regard to the draft notification, confirmed the draft notification with respect to the fees to be collected with effect from the academic year 1994-95. The fees fixed by the Government for free seat and payment seat in self-financing institutions have not been challenged till 1998. Further, it is provided that the Government may regulate tuition fee or any other fee and no educational institution shall receive or collect any fee or accept deposit in excess of the amount notified and every educational institution shall issue an official receipt for the fee or deposit received or collected by it.

10. In order to regulate fee structure, the Government of Tamil Nadu constituted a Committee as per the policy guidelines in fee fixation in private unaided educational institutions imparting higher education and technical education including the Management Education by Ministry of Human Resource Development. The Committee was constituted under the Chairmanship of Dr. B. Ilango, Vice Chancellor, Bharathiar University with other members in its Government Order in G.O. Ms. No.215, Higher Education Department dated 01.06.1998. Before

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the Committee could submit its report, the Association of self-financing institutions filed writ petitions in W.P. Nos. 9502 of 1998, etc. to fix the tuition fees. This Court by its order dated 05.10.1998, in the above writ petitions, passed an order inter-alia stating that the petitioner institute and also other institutes which are similarly situated are permitted to collect development fees at Rs.1,000/- for free seats and Rs.3,500/- for payment seats and for NRI seats for the academic year 1998-99 and it is for the institute to decide whether they should collect the same in one instalment or in any instalments. Further, this Court, by order dated 03.11.1998 made in the above writ petitions, directed the Government to issue copies of the report to the management and further directed that before taking final decision, the Management is also to be heard. As per the direction, the Committee's report was given to the petitioners, objections and suggestions were received from association, institutes, students and parents and were carefully considered by the Government. The Government, after careful consideration, issued the order in G.O. Ms. No.154 dated 15.04.1999 fixing the tuition fee to be levied by the unaided self-financing polytechnic and catering institutes.

11. According to the respondents, while replying to the averments made in W.P. No.4156 of 2000, it was contended that as per the direction of the High Court in W.P. No.10271 of 1999, the Government appointed a fresh Committee and after getting the report from the Committee, the Government accepted the recommendations and notified the same. It is stated that the State Government have power to fix the fees with respect to the professional colleges in view of the decision of the Apex Court in Unnikrishnan J.P. Vs. State of Andhra Pradesh reported in (1993) 1 SCC 645 (hereinafter referred to as "Unni Krishnan case") in which it is declared that no institution shall receive capitation fee and a draft scheme was prepared on the basis of which admission was regulated in various professional colleges. The Supreme Court, in the said judgment, has evolved a scheme in the nature of guidelines which the appropriate Governments and recognising and affiliating authorities shall impose and implement in addition to such other conditions and stipulations as they may think appropriate as conditions for grant of permission, grant of of recognition or grant of affiliation, as the case may be. Precisely, for our reference, in paragraph 210, sub-paragraph (6)(a), it was held as follows:

> "Every State Government shall forthwith constitute a Committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. The Committee shall consist of a Vice-Chancellor, Secretary for Education (or such Joint Secretary, as he may nominate) and Director, Medical Education/Director, Technical Education. The Committee shall make such enquiry as it thinks appropriate. It shall, however, give opportunity

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to the professional colleges [or their association (s), if any] to place such material, as they think fit. It shall, however, not be bound to give any personal hearing to anyone or follow any technical rules of law. The Committee shall fix the fee once every three years or at such longer intervals, as it may think appropriate.

12. In view of the above-said decision, the State Government appointed an expert Committee and on the basis of the report regarding fee structure to be followed in professional course in the institutions, the Government have issued notification fixing the fees with respect to the Colleges in question to be paid by the students to the unaided self-financing polytechnics and catering institutes. Thereafter, as per the directions of P. Shanmugam, J., vide his order dated 13.08.1999 in W.P.M.P. No.16474 of 1999 in W.P. No.10271 of 1999, the State Government, by order dated 07.09.1999, directed the Director of Technical Education to re-constitute the existing Committee constituted in G.O. Ms. No.215, Higher Education, dated 01.06.1998 with the same officials under the leadership of Dr. B. Ilango, Vice-Chancellor, Bharathiar University, Coimbatore to consider the representation of the petitioners and private catering institutes, including the Government institutions and submit its report to enable the Government to pass final orders within the time stipulated by the High Court. The Committee heard the suggestions made by the Management and Catering Technology Institutes and made recommendations to the Government.

13. Based on the above recommendations, the Government issued a draft notification in G.O. Ms. No.478, Higher Education, dated 06.12.1999 fixing the fees in respect of self-financing Hotel Management and Catering Technology institutions for the academic year 1999-2000 to be in force till 2001-2002. The said draft notification was published in the Gazette and objections and suggestions were invited from many persons with respect to the same. After the receipt of the said objections and considering the same, the Government have regularised the fees in the impugned G.O.Ms.No.12, Higher Education Department dated 18.01.2000.

14. As per the said Government Order, the following free structure was framed aggrieved by which, the petitioners filed these two writ petitions.

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UNAIDED HOTEL MANAGEMENT AND CATERING TECHNOLOGY

Courses	*Proposed tuition fees including special fees*	*Development fees*	*Total*
Hotel Management & Catering Technology			
1. Free seat	10800	1000	11800
2. Payment Seat	43200	3500	46700
3. NRI Student	43200	3500	46700

Tuition fees shall include special fees and laboratory fees and shall be inclusive of library expenditure, maintenance expenditure, training cost and contingent expenditure such as stationery, sports, water and any other recurring expenditure.

15. Aggrieved by the above fee structure, the present appeals.

16. Heard Mr. Kandavadivel Doraisamy, learned counsel for the appellants and Mr. M. Dandapani, learned Additional Government Pleader for the respondents.

17. It is not in dispute that the Government of Tamil Nadu, in order to prohibit the collection of capitation fee for admission to educational institutions in the State of Tamil Nadu and to provide the matters relating thereto, promulgated an ordinance called "the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fees) Ordinance 1992 which was later on enacted as Tamil Nadu Act 57/92 and exercising powers under the said Act, the Government issued a draft notification in G.O. Ms.No.727, Higher Education (J2) Department dated 29.02.1993, prescribing the tuition fee to be collected from the students. It is also not in dispute that in view of the decision of the Apex Court in Unni Krishnan case, the State Government appointed an expert Committee on the basis of the report regarding the fee structure to be followed in professional courses in the institutions and the Government have issued notification.

18. It is also seen that pursuant to the direction of the Supreme Court in Unni Krishnan case (supra), as an interim measure, fee was fixed in various States for private engineering colleges at the rates that were found to be acceptable to Courts. The A.I.C.T.E. framed regulations with respect to the engineering colleges incorporating the scheme laid down by the Supreme Court. Likewise,

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the University Grants Commission also prepared a draft regulation in this regard. While considering the status of implementation of the scheme in Unni Krishnan's case, the Apex Court in its order dated 09.08.1996, directed the Central Government, including the Ministry of Education, to take steps to convene a meeting of all the concerned authorities for evolving a proper fee structure for Medical, Engineering and Dental colleges throughout the country within three months. As per the said direction, meetings were held on 30.08.1996 and 08.10.1996. In the said meetings, it was decided that self-contained policy directions could be issued applicable to all sectors of education falling within the purview of the Ministry of Human Resource Development, namely, higher and technical education. The policy decision taken was placed before the President of India, who granted approval for the same. Clause 6.6 of the Resolution provides for fee determination, which reads as follows:

"6.6 Fee determination:

a Fee will have two broad categories - Tuition fee and Development fee. Besides, the management of the institutions may realise the actual cost of boarding and messing from the above students subject to the relevant Committee being satisfied about the reasonableness of such costs.

b Tuition Fee will seek to recover the actual cost of imparting education. While assessing a fair tuition fee, the Committee will take into account the following:

i Salary and allowances including bonus, if admissible, to teaching and non-teaching employees;

ii Expenditure on administrative services

iii Cost of maintenance of laboratories including consumables

iv contingent expenditure including statutory requirements like adult fee, etc.

v Cost of acquisition of books and journals for libraries and

vi Maintenance of buildings and other assets including rents and tariffs.

Keeping the above parameters in view, suitable rates will be fixed for holders of "free", "payment" and "NRI/Foreigh Students" categories.

c. The UGC and AICTE will forthwith prepare norms relating to staffing and scales of expenditure for other

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items wherever such norms have not so far been worked out, to the extent feasible, in cases where it is difficult to lay down specific quantified norms, the relevant Committee shall satisfy themselves about the adequacy and reasonableness of the expenditure involved. Care will be taken to ensure that the projected expenditure does not become a source of profit to the sponsors.

d As the scheme in UNNIKRISHNAN prohibits commercialisation and profit-making, it will not be open to the institutions concerned to claim any return on investments. This should, however, not come in the way of the institutions in mobilising resources for replacement and upgradation of assets. Further, while earning, return on investment would not be permissible the Court had, in the Unni Krishnan judgment left the question of recovering investment on the Central Government and the statutory bodies therefore considered desirable that the Development Fee could provide for an element of partial capital cost recovery to the management but not a return on investment and to serve as a resource for upkeep and replacement.

e Development Fee may be at flat rates to be determined every three years by the AICTE and UGC as the case may be. Different rate may be prescribed for "payment" and "free/merit", and "foreign/NRI" seat holders. These bodies could also classify institutions in different categories for the purposes of prescribing different slabs provided such categorisation is based on intelligible and objective criteria.

f In the first ten years, it would be open to the managements to appropriate upto half of the proceeds of the Development Fee or the actual capital cost, whichever be lower. The remaining half will have to be utilised for upgradation and replacements in the first ten years and thereafter, the entire proceeds will have to be so utilised.

g As the fee chargeable will be notified by the relevant Committee, it will be the duty of the statutory body concerned to communicate the rate of Development Fee to such bodies well in advance to enable the appropriate Committees to suitably incorporate such rates in their Notification. The UGC/AICTE will take into account the views and suggestions of the private institutions, the State Government and interested members of public while determining these rates"

19. On that basis, the Government also appointed a Committee earlier and the petitioners were not satisfied with the same and the learned single Judge, as stated above, directed the Government to

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refer the fee structure and accordingly, the Committee was reconstituted under the Chairmanship of Dr. B. Ilango, Vice-Chancellor, Bharathiar University, Coimbatore with other members.

20. The said Committee submitted a report in which Table-A contained a working sheet for fixation for Tuition and other fees for the institutions in question. In Table-B of the report, the Committee has recommended the ceiling rate of Tuition Fees and Development Fees, after taking into account, the various aspects placed before it.

21. The learned single Judge, after analysing all aspects and after finding that the fixation of the fees cannot be on the basis of the admission made for each institution, held that it can be fixed only on the basis of sanctioned strength of the institutions. Merely because the petitioner could not fill up the payment seats, the petitioner cannot challenge the fixation of the fees which has been done, taking into consideration the sanctioned strength of the institution and the materials furnished before them. Moreover, the Committee consisting of experts have given valid reasons to fix the quantum of fees as stated in the report which had been accepted by the Government and it is a well-settled principle that this Court cannot sit on appeal on those reasonings and nothing has been pointed out as to how the Committee has erred or omitted to consider the relevant portion of the objections while fixing the fee structure and the learned single Judge dismissed the writ petitions filed by the petitioner associations (hereinafter referred to as "the petitioners") as there were no merits.

22. The learned counsel for the appellants has strenuously contended that the impugned order is vitiated by arbitrariness and the learned single Judge has failed to see that the prayer of the appellants that the fee structure should be fixed on par with the fees collected by similar institutions run by the State Government and the Central Government is a reasonable one and the same is sustainable. Further, he has assailed the decision of the learned single Judge on the ground that the impugned order is not in accordance with the understanding arrived at in the meetings held within the members of the appellant association as the learned single Judge has failed to see that the report of the Committee would establish the case of the appellant and failure to furnish the copy of the report would vitiate the impugned orders and the appellant made out a case for re-fixing the fee structure on par with the fee structure prevalent in the institutions run by the State Government and the Central Government. It is his further contention that the conclusion of the learned single Judge that merely because the petitioner could not fill up the payment seats, the petitioner cannot challenge the fixation of fees which has been done taking into consideration the sanctioned strength of the institution and the materials furnished before them, is not correct.

23. The learned counsel for the appellants has brought to the

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notice of this Court, a decision of the Supreme Court reported in (2005) 6 SCC 537 (P.A. Inamdar Vs. State of Maharashtra) (hereinafter referred to as "P.A. Inamdar case" on the question of fee regulation and capitation fees and appealed to this Court that the rulings of the Supreme Court may be followed to decide the issue.

24. On the other hand, the learned Additional Government Pleader has resisted the contention of the appellants by arguing that Government Orders in question have been issued on a careful consideration and recommendation of the Committee as per the policy guidelines on fee fixation in private unaided educational institution imparting higher and technical education including the management education by the Ministry of Human Resources and Development and as per the direction of this Court as well as the ruling of the Supreme Court in Unni Krishnan's case. He further contended that in order to prohibit the collection of capitation fee for admission to educational institution in the State of Tamil Nadu and to provide for matters relating thereto, the enactment was made with an object and the Committee constituted under the guidelines and policy decision is with a rational nexus and object sought to be achieved and therefore, there is no infirmity with the order of the learned single Judge and he prayed this Court to dismiss the appeals.

25. We have considered the rival submissions made by the learned counsel on either side.

26. The point in issue is that while regulating the fee structure, what would be the ideal course to be adopted in determining the fixation of fees in case of unaided private educational institutions. In the light of the Supreme Court ruling in P.A.Inamdar case, in respect of fee regulation by the Government to set up a reasonable fee structure is also a component of the right to establish and administer an institution within the meaning of Article 30(1) of the Constitution and whether the Committees formed pursuant to Islamic Academy case is in accordance with law. It is to be decided as to what would be the method to be adopted and the criterion to be followed in fixing the fee structure.

27. In order to decide the above issue, it would be proper for us to go into the constitutional rights of the private unaided educational institutions under Articles 19(1)(g) and 30(1) of the Constitution of India and three important decisions of the Supreme Court, after the Unni Krishnan case, namely;

(i) the decision in T.M.A. Pai Foundation Vs. State of Karnataka reported in (2002) 8 SCC 481 (hereinafter referred to as "Pai Foundation case") decided by a 11 Judge Bench of the Supreme Court,

(ii) the Constitution Bench decision in the case of Islamic

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Academy of Education and Another Vs. State of Karnataka & Others reported in (2003) 6 SCC 697 (hereinafter referred to as "the Islamic Academy case") and

(iii) the 7 Judge Bench decision of the Supreme Court reported in (2005) 6 SCC 537 (P.A. Inamdar Vs. State of Maharashtra).

28. Let us now consider the above referred Articles and decisions of the Supreme Court in relevance to the points raised in these appeals and more particularly, about the fixation of fees by the unaided private educational institutions.

Article 19(1)(g)

All citizens shall have the right to practise any profession or to carry on any occupation, trade or business.

Article 30(1)

Right of minorities to establish and administer educational institutions:

All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

29. In the 11 Judge Bench decision of the Supreme Court in Pai Foundation case, the relevant paragraphs for our consideration are as under:

"2. Does Unni krishnan case require reconsideration?

27. In the case of Mohini Jain Vs. State of Karnataka, the challenge was to a notification of June 1989, which provided for a fee structure, whereby for government seats, the tuition fee was Rs.2,000/- per annum, and for students from Karnataka, the fee was Rs.25,000/- per annum while the fee for Indian students from outside Karnataka, under the payment category was Rs.60,00/- per annum. It had been contended that charging such a discriminatory high fee violated constitutional guarantees and rights. This attack was sustained, and it was held that there was a fundamental right to education in every citizen, and the State was duty-bound to provide education, and that the private institutions that discharge the State's duties were equally bound not to charge a higher fee than the Government institutions. The Court then held that any prescription of fee in excess of what was payable in Government colleges was a capitation fee and would, therefore, be illegal. The correctness of

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this decision was challenged in Unni Krishnan case where it was contended that if Mohini Jain ratio was applied, the educational institutions would have to be closed down, as they would be wholly unviable without appropriate funds, by way of tuition fees, from their students.

35. It appears to us that the scheme framed by this Court and thereafter followed by the Governments was one that cannot be called a reasonable restriction under Article 19(6) of the Constitution. Normally, the reason for establishing an educational institution is to impart education. The institution thus needs qualified and experienced teachers and proper facilities and equipment, all of which require capital investment. The teachers are required to be paid properly. As pointed out above, the restrictions imposed by the scheme, in Unni Krishnan case made it difficult, if not impossible, for the educational institutions to run efficiently. Thus, such restrictions cannot be said to be reasonable restrictions.

38. The scheme in Unni Krishnan case has the effect of nationalising education in respect of important features viz. the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme, the private institutions are indistinguishable from the Government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair nor reasonable. Even in the decision in Unni Krishnan case, it has been observed by Jeevan Reddy, J. at page 749, para 194 as follows:

"194. The hard reality that emerges is that private educational institutions are a necessity in the present-day context. It is not possible to do without them because the Governments are in no position to meet the demand - particularly in the sector of medical and technical education which call for substantial institutions - including minority educational institutions - too have a role to play."

161. The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation."

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30. A careful reading of the above decision has made it clear that there should not be capitation fee or profiteering. But to meet the cost of expansion and augmentation of facilities, the fee regulation has to be met by the Government.

31. A Constitution Bench of the Supreme Court, in the Islamic Academy case, while dealing with the question of fixation of fee, has held in paragraphs 6 to 8 as under:

> "6. In view of the rival submissions, the following qustions arise for consideration:
>
> 1. whether the educational institutions are entitled to fix their own fee structure;
>
> 2. whether minority and non-minority educational institutions stand on the same footing and have the same rights;
>
> 3. whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not, to what extent; and
>
> 4. whether private unaided professional colleges are entitled to admit students by evolving their own method of admission.
>
> Question 1
>
> 7. So far as the first question is concerned, in our view the majority judgment is very clear. Thre can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institutions and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment, it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and / or betterment of the institution etc. Of course, there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must

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be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations, which govern the fixation of fees and as this court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in T.M.A. Pai case, the respective State Governments/concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by the chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE"), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that the total number of members of the Committee shall not exceed five. Each educational institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure, all relevant documents and books of accounts must also be produced before the Committee for their scrutiny. The committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise, e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.

8. It must be mentioned that during arguments, it was pointed out to us that some education institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would

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leave the institute midstream. it was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view, an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in midstream, then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year, only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course, the interest earned on these deposits must be paid to the student from whom the fees were collected in advance."

32. In P.A. Inamdar case, a 7 Judge Bench of the Supreme Court, has finally ruled what would be the proper method to be adopted for determining the fee and the powers of the Government as well as the private unaided educational institutions and the relevant paragraphs read as under:

139. To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30 (1) of the Constitution, as per the law declared in Pai Foundation. Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form (para 56 to 58 and 161 [answer to Question 5 (c)] of Pai Foundation are relevant in this regard).

142. Most vehement attack was laid by all the learned counsel appearing for the petitioner applicants on that part of Islamic Academy which has directed the constitution of two Committees dealing with admissions and fee structure. Attention of the court was invited to paras 35,37,38 and 45 and 161 of Pai Foundation wherein similar scheme framed in Unni Krishnan was specifically struck down. Vide para 45, Chief Justice Kirpal has clearly ruled that the decision in Unni Krishnan insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct and to that extent the said decision and the consequent directions given to UGC, AICTE, MCI, the Central and the State Governments, etc. are overruled. Vide para 161, Pai Foundation upheld Unni Krishnan to the extent to

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which it holds the right to primary education as a fundamental right but the scheme was overruled. However, the principle that there should not be capitation fee or profiteering was upheld. Leverage was allowed to educational institutions to generate reasonable surplus to meet cost of expansion and augmentation of facilities which would not amount to profiteering. It was submitted that Islamic Academy has once again restored such committees which were done away with by Pai Foundation.

147. In our considered view, on the basis of judgment in Pai Foundation and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved out of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.

148. A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or ad hoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature.

149. However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticised the functioning of some of the Committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institution run into losses. In some of the institutions, the teachers have left their jobs and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the Committees. Retired High Court Judges heading the Committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities.

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> They should refrain from generalising fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.
>
> 150. We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.
>
> 151. On Question 4, our conclusion, therefore, is that the judgment in Islamic Academy insofar as it evolves the scheme of the two Committees, one each for admission and fee structure, does not go beyond the law laid down in Pai Foundation and earlier decisions of this court, which have been approved in that case. The challenge to setting up of the two Committees in accordance with the decision in Islamic Academy therefore fails. However, the observation by way of clarification, contained in the latter part of para 19 of Islamic Academy which speaks of quota and fixation of percentage by the State Government is rendered redundant and must go in view of what has been already held by us in the earlier part of this judgment while dealing with Question 1."

33. In the light of the above three decisions, it is well settled that the scheme evolved out of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities. Retired High Court Judges heading the Committees are assisted by experts in accounts and management to evolve a scheme. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities and they should refrain from generalising fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.

34. The learned Additional Government Pleader has submitted before this Court that in view of the Committee constituted by the State Government under the Chairmanship of a retired High Court Judge with other members and of the fact that the matter is pending before

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the said Committee, the present fee structure framed by the Government in the Government Orders under challenge shall continue to remain in force.

35. In the light of the present legal position and in view of the rulings of the Supreme Court and the order of the learned single Judge holding that the Government Orders are in conformity with the recommendations of the expert committee constituted by the Government, we are not inclined to interfere with the conclusion arrived at by the learned single Judge. In view of the recent development and of the latest ruling of the Supreme Court, the relief sought for by the appellants in these writ appeals are to be decided only after the outcome of the decision of the Committee constituted by the Government. The appellants are entitled to get the relief only on that decision and the Government Orders to be passed therein.

36. In that view, the appeals are disposed of with a direction that the appellants herein are free to represent their grievance i.e. favourable consideration of enhancement of present fee structure before the Committee, based on their individual institutions, accounts, plans, budgets, etc. and the same may be considered by the Committee in the light of the Supreme Court decision in P.A. Inamdar case.

37. Further, the Government, while deciding the issue, may consider the grievance of the appellants, taking into account the larger public interest and the interest of the educational institutions and their fundamental right to establish and run the same.

The writ appeals are ordered in the above terms. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to the Government of Tamil Nadu
   Higher Education Department
   (J2) Secretariat
   Chennai - 600 009

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2. The Director of Technical Education
Chennai - 600 025

+1cc to the Govt. Pleader Sr 26734

+2ccs to M/s. Muthumani Doraisami, Advocate Sr 26779

JP (CO)
km/27.6.

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